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10/085,169

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,169	02/25/2002	Jose Castillo Deniega	IFLOW.063DV1	3825
20995	7590	09/15/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				LAM, ANN Y
ART UNIT		PAPER NUMBER		
				1641

DATE MAILED: 09/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/085,169	DENIEGA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ann Y. Lam	1641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 28 June 2004.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-3,5-8,11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3, 5-8, 11 and 12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Lampropoulos et al., 5,817,072.

As to claims 1 and 5, Lampropoulos et al. discloses an elongated tube having a plurality of exit holes increasing in size along the length of the catheter (column 7, lines 57-67), so that a fluid flowing therein will flow through substantially all of said exit holes at a substantially equal rate (column 7, lines 57-67), a lumen of said catheter having a cross-sectional flow area, said exit holes having a fixed, combined cross-sectional flow area less than the flow area of the lumen so that the exit holes define a flow restricting orifice of the catheter (column 8, lines 8-13), the catheter being formed from a material that is non-reactive to anatomical system. (Since the slots are normally in a closed position, the cross-sectional area of the slots are considered to be smaller than the cross section area of the lumen.)

As to claim 5, since Lampropoulos discloses such a catheter, Lampropoulos therefore discloses the steps of manufacturing the catheter, including the step of

providing exit holes having a fixed size. The holes are considered to have a fixed size when, for example, they are in a closed position.

As to claim 2, the holes are provided throughout the circumference of the catheter (see figure 6).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampropoulos et al., 5,817,072.

Lampropoulos discloses the invention substantially as claimed (see above), except for the specific diameter of the exit holes.

The diameter of the exit holes that would achieve the optimum results, i.e., the most uniform delivery of fluids, as taught by Lampropoulos, can be discovered through routine experimentation and thus would be obvious.

### ***Response to Arguments***

The provisional obviousness-type double patenting rejection in the previous Office action is hereby withdrawn in view of the terminal disclaimer filed June 28, 2004, which has been approved.

Applicant's arguments filed June 28, 2004 have been fully considered but they are not persuasive.

Applicant argues on page 5 that the Lampropoulos reference does not disclose or suggest a catheter having a fixed collective area of the exit slots that is less than a cross-sectional area of the catheter lumen.

In response, Examiner asserts that the term "fixed" means securely placed or fastened, i.e., stationary, according to Merriam Webster's Collegiate Dictionary, Tenth Edition. The combined area of the slots in Lampropoulos are considered fixed when they are stationary. Therefore, when the slots are in a closed position, the combined area of the slots are considered fixed, i.e., stationary, and is considered less than the cross-sectional area of the lumen of the tube. Moreover, the combined area of the slots is also considered fixed, or stationary, when the slots are in an open position as long as the combined area is not changing, due to static fluid pressure for example. At some position between a closed and fully open position, the slots will have a combined area that is less than the cross-sectional area of the lumen of the tube.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is 571-272-0822. The examiner can normally be reached on M-Sat 11-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.L.



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9/14/04